

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
ERICK HERBERT,)
d.b.a. THRIFTMORE APARTMENTS,)
Appellant,)
vs.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 272

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, the appeal of two civil penalties totalling \$75.00 for two alleged smoke emission violations of respondent's Regulation I, came before all members of the Pollution Control Hearings Board at a formal hearing in a conference room of respondent's Seattle offices, at 3:00 p.m., April 5, 1973.

Appellant was present and represented himself. Respondent appeared through its counsel, Keith D. McGoffin. Evan Aaron, Seattle court reporter, recorded the proceedings.

1 Witnesses were sworn and testified. Exhibits were offered and
2 admitted.

3 On the basis of testimony heard and exhibits examined, the Pollution
4 Control Hearings Board prepared Proposed Findings of Fact, Conclusions
5 and Order which were submitted to the appellant and respondent on
6 May 11, 1973. No objections or exceptions to the Proposed Order having
7 been received, the Pollution Control Hearings Board makes and enters
8 the following

9 FINDINGS OF FACT

10 I.

11 On December 7, 1972, from the boiler stack of appellant's
12 Thriftmore Apartments, 1213 East Union Street, Seattle, King County,
13 there was emitted for at least eight consecutive minutes black smoke
14 greater in density than No. 2 on the Ringelmann scale.

15 II.

16 On December 30, 1972, from the same boiler stack, there was emitted
17 for at least ten consecutive minutes black smoke greater in density than
18 No. 2 on the Ringelmann scale.

19 III.

20 Section 9.03(a) of respondent's Regulation I makes it unlawful to
21 cause or allow the emission of an air contaminant for more than three
22 minutes in a one hour period greater in density than No. 2 on the
23 Ringelmann scale.

24 IV.

25 Respondent issued to appellant Notice of Violation No. 6643 and
26 Notice of Civil Penalty No. 594 in the amount of \$25.00 for the

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 December 7, 1972 incident and Notice of Violation No. 7193 and Notice
2 of Civil Penalty No. 621 in the amount of \$50.00 for the December 30,
3 1972 incident. The two civil penalties are the subject of this appeal.

4 V.

5 Desiring to acquire a heating element less likely to cause air
6 pollution, appellant subsequently installed a natural gas burner for
7 the Thriftmore Apartments' furnace.

8 From these Findings, the Pollution Control Hearings Board comes
9 to these

10 CONCLUSIONS

11 I.

12 Appellant was in violation of Section 9.03(a) of respondent's
13 Regulation I on December 7 and 30, 1972.

14 II.

15 Notices of Civil Penalty Nos. 594 and 621, each being much less
16 than the maximum allowable amount for a violation of respondent's
17 Regulation I, are reasonable.

18 III.

19 However, the installation of a natural gas furnace was an expense
20 incurred by appellant to keep the Thriftmore Apartments in compliance
21 with air pollution regulations. With compliance apparently achieved,
22 collection of the penalties seems unnecessary.

23 From these Conclusions, the Pollution Control Hearings Board
24 issues this

25 ORDER

26 The appeals are denied, but Notices of Civil Penalty Nos. 594 and

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 621 are suspended on condition of no further violation for a period of
2 six months from the date of this Order.

3 DONE at Olympia, Washington this 14th day of June, 1973.

4 POLLUTION CONTROL HEARINGS BOARD

5 Walt Woodward
6 WALT WOODWARD, Chairman

7 W. A. Gissberg
8 W. A. GISSBERG, Member

9 James T. Sheehy
10 JAMES T. SHEEHY, Member

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER